ATTORNEY FOR APPELLANT:

BARBARA S. BARRETT
Evansville, Indiana

ATTORNEY FOR APPELLEE:

MARY JANE HUMPHREY
Indiana Department of Child Services,
Vanderburgh County
Evansville, Indiana

IN THE
COURT OF APPEALS OF INDIANA

In the Matter of the Termination of the Parent-Child Relationship of A.T., IV, and A.T., the Minor Children, A.T., III, the Father,	)	
ALFRED T., III,	)	
Appellant-Respondent,	)	
vs.	)	No. 82A01-0803-JV-115
VANDERBURGH COUNTY DEPARTMENT of CHILD SERVICES,	)	
Appellee-Petitioner.	)	

APPEAL FROM THE VANDERBURGH SUPERIOR COURT
The Honorable Brett J. Niemeier, Judge
Cause Nos. 82D01-0608-JT-86 and 82DF01-0608-JT-87

October 17, 2008

MEMORANDUM DECISION - NOT FOR PUBLICATION

KIRSCH, Judge

Alfred T., III ("Father") appeals the involuntary termination of his parental rights, in Vanderburgh Superior Court, to his children, A.T. IV, and A.T. Father challenges the sufficiency of the evidence supporting the trial court's judgment. We affirm.

FACTS AND PROCEDURAL HISTORY

The facts most favorable to the judgment reveal that on June 25, 2004, local police and fire personnel were dispatched to a house fire in Vanderburgh County. Tikemia J. ("Mother") had left A.T. IV, born on December 26, 2000, and A.T., born on October 10, 2002, home alone with their seven-year-old sister when the fire broke out. All three children were placed under emergency protective custody, transported to Deaconess Hospital, and treated. After the fire was extinguished, a check of the house revealed the electricity had been turned off, there was no food for the children, and the house was roach infested. Father's whereabouts were unknown.[1]

On June 30, 2004, the Vanderburgh County Department of Child Services ("VCDCS") filed a petition alleging A.T. IV and A.T. were children in need of services ("CHINS"). On July 2, 2004, the trial court determined there was probable cause to believe the children were CHINS and ordered that the children remain in foster care under the temporary wardship of VCDCS. A.T. IV and A.T. were adjudicated CHINS on September 14, 2004.

Following a dispositional hearing held on November 24, 2004, Father, who was represented by counsel, signed a parental participation agreement, and the trial court

[1] Mother voluntarily relinquished her parental rights to A.T. IV and A.T. on August 9, 2007. Mother does not participate in this appeal. Consequently, we limit our recitation of the facts to those pertinent to Father's appeal.

thereafter issued a dispositional order requiring Father to comply with the parental participation agreement in order to achieve reunification with his children. The parental participation agreement directed Father to, among other things: (1) submit to a parenting assessment and follow all resulting recommendations; (2) successfully complete parenting classes; (3) obtain a G.E.D.; (4) maintain clean and adequate housing; (5) ensure the children have a safe, nurturing, and drug-free environment with adequate supervision at all times; (6) cooperate with VCDCS caseworkers and service providers and maintain bi-weekly contact with case manager; (7) submit to random drug screens; (8) maintain legal source of income; (9) inform VCDCS of any changes in household composition, employment, address, or telephone number within forty-eight hours; and (10) obey the law.

Father was convicted of Class D felony sexual battery of a minor on July 18, 2005. He was later convicted for failure to register as a sex offender as a Class D felony, on June 30, 2006, and again on August 29, 2007, as a Class C felony. Meanwhile, the VCDCS filed a petition to involuntarily terminate Father's parental rights to A.T. IV and A.T. on August 14, 2006.

A two-day fact-finding hearing on the termination petition commenced on November 13, 2007, and was concluded on November 16, 2007. Father was incarcerated at the time of the fact-finding hearing on his second conviction for failure to register as a sex offender. At the conclusion of the hearing, the trial court took the matter under advisement and, on February 4, 2008, issued its judgment terminating Father's parental rights to A.T. IV and A.T. Father now appeals.

DISCUSSION AND DECISION

Father alleges VCDCS failed to prove IC 31-35-2-4(b)(2)(B) by clear and convincing evidence as is required for the involuntary termination of parental rights. Specifically, Father asserts that VCDCS "wholly failed to provide [Father] with any services or . . . [to develop] . . . a plan to reunite [him] with his two (2) children." *Appellant's Br.* at 10. Father therefore concludes that "[b]ecause no efforts were extended by [VCDCS] to reunify [Father's] family, there was no evidence upon which the trial court could rely in making the determination whether the services offered to [Father], and [Father's] response to those services, would have remedied the conditions which caused the children to be removed . . . in the first place." *Id.* at 12. Father also asserts there was no evidence to show he posed a threat to his children.

We initially observe that this Court has long had a highly deferential standard of review in cases concerning the termination of parental rights. *In re K.S.*, 750 N.E.2d 832, 836 (Ind. Ct. App. 2001). Thus, when reviewing the termination of parental rights, we will not reweigh the evidence or judge the credibility of the witnesses. *In re D.D.*, 804 N.E.2d 258, 264 (Ind. Ct. App. 2004), *trans. denied*. Instead, we consider only the evidence and reasonable inferences that are most favorable to the judgment. *Id*.

Here, the trial court made specific findings in terminating Father's parental rights. Where the trial court enters specific findings of fact and conclusion thereon, we apply a two-tiered standard of review. First, we must determine whether the evidence supports the findings. *Bester v. Lake County Office of Family & Children*, 839 N.E.2d 143, 147 (Ind. 2005). Secondly, we determine whether the findings support the judgment. *Id.* In

deference to the trial court's unique position to assess the evidence, we will set aside the court's judgment terminating a parent-child relationship only if it is clearly erroneous. *In re L.S.*, 717 N.E.2d 204, 208 (Ind. Ct. App. 1999), *trans. denied*. A finding is clearly erroneous when there are no facts or inferences drawn therefrom that support it. *D.D.*, 804 N.E.2d at 264. A judgment is clearly erroneous only if the findings do not support the court's conclusions or the conclusions do not support the judgment thereon. *Quillen v. Quillen*, 671 N.E.2d 98, 102 (Ind. 1996).

"The traditional right of parents to establish a home and raise their children is protected by the Fourteenth Amendment of the United States Constitution." *In re M.B.*, 666 N.E.2d 73, 76 (Ind. Ct. App. 1996), *trans. denied*. However, a trial court must subordinate the interests of the parents to those of the child when evaluating the circumstances surrounding the termination. *K.S.*, 750 N.E.2d at 837. Parental rights may be terminated when the parents are unable or unwilling to meet their parental responsibilities. *Id.* at 836.

In order to terminate a parent-child relationship, the State is required to allege that:

(A) one (1) of the following exists:

(i) the child has been removed from the parent for at least six (6) months under a dispositional decree;

* * *

(B) there is a reasonable probability that:

(i) the conditions that resulted in the child's removal or the reasons for placement outside the home of the parents will not be remedied; or

(ii) the continuation of the parent-child relationship poses a threat to the well-being of the child;

(C) termination is in the best interests of the child; and

(D) there is a satisfactory plan for the care and treatment of the child.

IC 31-35-2-4(b)(2). The State must establish each of these allegations by clear and convincing evidence. *Egly v. Blackford County Dep't of Pub. Welfare*, 592 N.E.2d 1232, 1234 (Ind. 1992). If a trial court finds the allegations in a termination petition "described in section 4 of this chapter are true, the court shall terminate the parent-child relationship." IC 31-35-2-8.

We note that IC 31-35-2-4(b)(2)(B) is written in the disjunctive. Thus, a trial court need only find one of the two requirements of subsection (B) have been satisfied. *See L.S.*, 717 N.E.2d at 209. We therefore first consider whether clear and convincing evidence supports the trial court's determination that there is a reasonable probability the conditions necessitating the children's removal from Father's care will not be remedied.

When considering whether a reasonable probability exists that the conditions justifying a child's removal and continued placement outside the home will or will not be remedied, the trial court must judge a parent's fitness to care for his or her child at the time of the termination hearing, taking into consideration evidence of changed conditions. *In re J.T.*, 742 N.E.2d 509, 512 (Ind. Ct. App. 2001), *trans. denied*. The court must also evaluate the parent's habitual patterns of conduct to determine whether there is a substantial probability of future neglect or deprivation of the child. *In re M.M.*, 733 N.E.2d 6, 13 (Ind. Ct. App. 2000). VCDCS is not required to rule out all possibilities of change;

rather, it need establish "only that there is a reasonable probability that the parent's behavior will not change." *In re Kay. L.*, 867 N.E.2d 236, 242 (Ind. Ct. App. 2007).

In determining there is a reasonable probability Father's behavior will not change and the conditions resulting in the children's removal and continued placement outside Father's care will not be remedied, the trial court made the following pertinent findings:

> 9. [Father] testified that he may have three (3) other children. Paternity has not been established on any of the children, because he stated that the mother of the children did not want to establish paternity. They were "one night stands." [Father] testified that he did not want paternity established "formal." He would take care of the children.
>
> 10. [Father] was convicted of sexual battery on a minor on July 18, 2005, for failure to register as a sex offender on June 30, 2006, and again for failure to register as a sex offender on August 28, 2007.
>
> 11. [Father] is currently serving time on the second conviction for failure to register as a sex offender and is currently incarcerated at Plainfield Correctional Facility.
>
> * * *
>
> 13. [Father] has not paid any support for [A.T. IV] or [A.T.] He testified that it is suspended while he is in prison. He also testified that he provided other things like diapers to the mother for the children.
>
> 14. [Father] has failed to maintain steady employment when he was not incarcerated. . . . He testified that the longest that he has worked is for six (6) months at McDonalds at six (6) dollars an hour for thirty (30) hours per week. He testified that he has never been fired from a job, but he would quit. He testified that the reasons he quit included that he was not given a promotion and that he could not get along with a fellow employee.
>
> 15. [Father] did not visit with [the children] as required. . . . Sometimes he called when he could not attend; sometimes he did not call.
>
> 16. [Father] will have restrictions upon release from his present incarceration being that he can have no contact with any children. He

> cannot live with any children in his home or within 1000 feet of a school. There are no exceptions meaning that he is not allowed to have contact with his children, or he will be in violation of his parole or probation for a period of ten (10) years. The father offers no solution to this problem.
>
> * * *
>
> 18. Since June of 2004, [Father] has been incarcerated from November 3, 2004 to February 2005, from April 5, 2005 to December 28, 2005, from March 31, 2006 to November 2006, and from June 2007 to and past the date of the termination trial for a period of seventeen (17) months that he was out of jail. During that seventeen (17) [months], he failed to significantly participate in services.
>
> 19. When [Father] . . . was not incarcerated, he did not participate in services in that he failed [to] cooperate with random drug screens, failed to keep in contact with the family case manager, failed to visit on a regular basis, when permitted to visit with [the children], failed to cooperate with the parent aide, [and] failed to maintain employment and housing.
>
> 20. [Father] . . . failed to comply with the terms of the parental participation agreement.
>
> 21. [Father] . . . claims he was discriminated [against] by [VCDCS], but no evidence supports his allegations and the [C]ourt rejects his claims.

Appellant's App., Vol. 1 at 117-19. The trial court then concluded that "the allegations of the petition to terminate parental rights are true in that . . . [t]here is a reasonable probability that the conditions that resulted in [the children's] removal from, and continued placement outside[,] the care and custody of [Father] will not be remedied." *Id.* at 119.

We initially point out that Father's assertion that VCDCS failed to prove by clear and convincing evidence there is a reasonable probability the conditions resulting in the children's removal from Father's care will not be remedied simply because VCDCS allegedly failed to provide him with reunification services is unavailing. Although a trial

court may reasonably consider the services offered by a county welfare department and a parent's response to those services when assessing the parent's fitness to care for his or her children, the law concerning the termination of parental rights does not *require* a county department to provide services to a parent to aid the parent in correcting his or her parenting deficiencies. *In re B.D.J.*, 728 N.E.2d 195, 201 (Ind. Ct. App. 2000). Rather, although a participation agreement serves as a useful tool in assisting parents in meeting their obligations, and although county departments of public welfare routinely offer such services to assist parents in regaining custody of their children, as long as the elements of IC 31-35-2-4 are established by clear and convincing evidence, termination of parental rights may occur. *Id.*; *see also A.P. v. Porter County Office of Family & Children*, 734 N.E.2d 1107, 1118 (Ind. Ct. App. 2000) (stating that elements set forth in IC 31-35-2-4 are exclusive), *trans. denied*.

Our review of the evidence leaves us convinced that clear and convincing evidence supports the trial court's findings and conclusions set forth above, which, in turn support the court's ultimate decision to terminate Father's parental rights. The record reveals that when the children were initially removed from Mother in June 2004, Father's whereabouts were unknown; thus, he was unavailable to parent the children. Father, who has a significant criminal history including a conviction for sexual abuse of a minor, remained unavailable throughout the majority of the CHINS proceedings as a result of being in and out of prison. During the brief periods of time when Father was not incarcerated, Father failed to avail himself of court-ordered services. Consequently, by the time of the termination hearing, Father had failed to complete the majority of dispositional goals

specified in the parental participation agreement. For example, Father, among other things, had failed to: submit to random drug screens; maintain steady employment; obtain stable housing; regularly visit with the children; maintain contact with VCDCS; and pay child support. In addition, at the time of the termination hearing, Father was once again incarcerated and therefore unavailable to parent A.T. IV and A.T. Also significant, due to the nature of his latest conviction, Father will remain unavailable to parent the children for at least ten years following his release from prison because the terms of his parole or probation will strictly prohibit him from living or having any contact with any children, including his own, for ten years.

As stated earlier, the trial court "must assess the parent's ability to care for the children as of the date of the termination hearing." *Rowlett v. Vanderburgh County Office of Family & Children*, 841 N.E.2d 615, 621 (Ind. Ct. App. 2006), *trans. denied*. Based on the foregoing, we conclude that the trial court's determination that there is a reasonable probability the conditions which led to removal of the children from Father's care will not be remedied is supported by clear and convincing evidence and therefore is not erroneous. *See Lang v. Starke County Office of Family & Children*, 861 N.E.2d 366, 372 (Ind. Ct. App. 2007) (concluding that "[a] pattern of unwillingness to deal with parenting problems and to cooperate with those providing social services, in conjunction with unchanged conditions, support[s] a finding that there exists no reasonable probability that the conditions will change"), *trans. denied*; *see also Castro v. State Office of Family & Children*, 842 N.E.2d 367, 374 (Ind. Ct. App. 2006) (concluding that trial court did not commit clear error in finding conditions leading to child's removal from father would not

be remedied where father, who had been incarcerated throughout CHINS and termination proceedings, was not expected to be released for several years after termination hearing), *trans. denied.*

This Court has previously recognized that "[i]ndividuals who pursue criminal activity run the risk of being denied the opportunity to develop positive and meaningful relationships with their children." *Id.* Even assuming, *arguendo*, Father will eventually develop into a suitable parent, the children should not be required to wait ten or more additional years to enjoy the permanency and stability that is essential to their sound development and overall well-being. We are unwilling to put A.T. IV and A.T. on a shelf until Father is willing and able to care for them. The approximate three and a half years they have already waited is long enough. *See In re Campbell*, 534 N.E.2d 273, 275 (Ind. Ct. App. 1989) (stating that Welfare Department does not have to rule out "any possibility" of change and concluding that approximately two years without improvement is "long enough").

Affirmed.

VAIDIK, J., and CRONE, J., concur.